

PART 1181—TRANSFERS OF OPERATING RIGHTS UNDER 49 U.S.C. 10926

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AUTHORITY: 5 U.S.C. 553, and 49 U.S.C. 10321 and 10926.

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§ 1181.0 Scope of rules.

These rules define the procedures that enable motor passenger and property carriers, water carriers, property brokers, and household goods freight forwarders to obtain approval from the Interstate Commerce Commission to merge, transfer, or lease their operating rights in financial transactions not subject to 49 U.S.C. 11343. Transactions covered by these rules are governed by 49 U.S.C. 10321 and 10926. The filing fee is set forth at 49 CFR 1002.2(f)(25).

§ 1181.1 Definitions.

For the purposes of this part, the following definitions apply:

(a) *Transfer*. Transfers include all transactions (*i.e.*, the sale or lease of interstate operating rights,¹ or the merger of two or more carriers or a carrier into a noncarrier) subject to 49 U.S.C. 10926, as well as the sale of property brokers' licenses under 49 U.S.C. 10321.

(b) *Operating rights*. Operating rights include:

(1) Certificates and permits issued to motor and water carriers;

¹The execution of a chattel mortgage, deed of trust, or other similar document does not constitute a transfer or require the Commission's approval. However, a foreclosure for the purpose of transferring an operating right to satisfy a judgment or claim against the record holder may not be effected without approval of the Commission.

(2) Permits issued to household goods freight forwarders;

(3) Licenses issued to property brokers; and

(4) Certificates of Registration issued to motor carriers. The term also includes authority held by virtue of the gateway elimination regulations published in the FEDERAL REGISTER as letter-notices.

(c) *Certificate of registration*. The evidence of a motor carrier's right to engage in interstate or foreign commerce within a single State is established by a corresponding State certificate.

(d) *Person*. An individual, partnership, corporation, company, association, or other form of business, or a trustee, receiver, assignee, or personal representative of any of these.

(e) *Record holder*. The person shown on the records of the Commission as the legal owner of the operating rights.

(f) *Control*. A relationship between persons that includes actual control, legal control, and the power to exercise control, through or by common directors, officers, stockholders, a voting trust, a holding or investment company, or any other means.

(g) *Category 1 transfers*. Transactions in which the person to whom the operating rights would be transferred is not an ICC carrier and is not affiliated with any ICC carrier.

(h) *Category 2 transfers*. Transactions in which the person to whom the operating rights would be transferred is an ICC carrier and/or is affiliated with an ICC carrier.

§ 1181.2 Applications.

(a) *Procedural requirements*. (1) At least 10 days before consummation, an original and two copies of a properly completed Form OP-FC-1 and any attachments (*see* paragraph (b)(1)(viii) of this section) must be filed with the Office of the Secretary, Applications and Fees Unit, Interstate Commerce Commission, Washington, DC 20423. The original must show that an additional copy has been furnished to the Commission's Regional Director for the Region(s) in which the applicants' headquarters are located. The nonrefundable filing fee prescribed by 49 CFR 1002.2(f)(25) must accompany the application.

(2) At any time after the expiration of the 10-day waiting period, applicants may consummate the transaction, subject to the subsequent approval of the application by the Commission, as described below. The transferee may commence operations under the rights acquired from the transferor upon its compliance with the Commission's regulations governing insurance, tariffs (if applicable), and process agents. *See* 49 CFR parts 1043, 1312 and 1044, respectively. In addition, contract carriers must comply with the Commission's regulations concerning contracts at 49 CFR part 1053. In the alternative, applicants may wait until the Commission has issued a decision on their application before transferring the operating rights. If the transferee wants the transferor's operating authority to be reissued in its name, it should furnish the Commission with a statement executed by both transferor and transferee indicating that the transaction has been consummated. Authority will not be reissued until after the Commission has approved the transaction.

(b) *Information required.* (1) In category 1 and category 2 transfers, applicants must furnish the following information:

- (i) Full name, address, and signatures of the transferee and transferor.
- (ii) A copy of that portion of the transferor's operating authority involved in the transfer proceeding.
- (iii) A short summary of the essential terms of the transaction.
- (iv) If relevant, the status of proceedings for the transfer of State certificate(s) corresponding to the Certificates of Registration being transferred.
- (v) A statement as to whether the transfer will or will not significantly affect the quality of the human environment.
- (vi) Certification by transferor and transferee of their current respective safety ratings by the United States Department of Transportation (*i.e.*, satisfactory, conditional, unsatisfactory, or unrated).
- (vii) Certification by the transferee that it has sufficient insurance coverage under 49 U.S.C. 10927 for the service it intends to provide.
- (viii) Information to demonstrate that the proposed transaction is con-

sistent with the national transportation policy and satisfies the criteria for approval set forth at § 1181.4 of this part. (Such information may be appended to the application form and, if provided, would be embraced by the oath and verification contained on that form.)

(ix) If motor carrier operating rights are being transferred, certification by the transferee that it is not domiciled in Mexico nor owned or controlled by persons of that country.

(2) Category 2 applicants must also submit the following additional information:

- (i) Name(s) of the carrier(s), if any, with which the transferee is affiliated.
- (ii) Aggregate revenues of the transferor, transferee, and their carrier affiliates from interstate transportation sources for a 1-year period ending not earlier than 6 months before the date of the agreement of the parties concerning the transaction. If revenues exceed \$2 million, the transfer may be subject to 49 U.S.C. 11343 rather than these rules.

[53 FR 4852, Feb. 18, 1988, as amended at 54 FR 35343, Aug. 25, 1989]

§ 1181.3 Notice.

The Commission will give notice of approved transfer applications through publication in the *ICC Register*.

§ 1181.4 Commission action and criteria for approval.

A transfer will be approved under this section if:

- (a) The transaction is not subject to 49 U.S.C. 11343; and
- (b) The transaction is consistent with the public interest; however,
- (c) If the transferor or transferee has an "Unsatisfactory" safety fitness rating from DOT, the transfer may be denied. If an application is denied, the Commission will set forth the basis for its action in a decision or letter notice. If parties with "Unsatisfactory" safety fitness ratings consummate a transaction pursuant to the 10-day rule at § 1181.2 of this part prior to the notification of Commission action, they do so at their own risk and subject to any conditions we may impose subsequently. Transactions that have been consummated but later are denied by